

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARRY THOMAS,

Plaintiff,

-v-

No. 09 Civ. 5209 (LTS)(MHD)

Mrs. A.E. CALERO, Sgt. M. BERRY,
C.O. FRANCISCO CARABALLO,
C.O. RODNEY LASSITER, and
Dir. NORMAN R. BEZIO,

Defendants.

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ORDER ADOPTING REPORT AND RECOMMENDATION

Pro se plaintiff Larry Thomas (“Plaintiff”), an inmate in the New York State correctional system, commenced this action on June 3, 2009, by filing a complaint pursuant to 42 U.S.C. § 1983 against five employees of the Department of Correctional Services (“Defendants”), alleging that they violated his civil rights by filing false misbehavior reports, testifying falsely at his disciplinary hearing, denying him the right to call two witnesses at that hearing, and then affirming the findings of the hearing. The case was assigned to then-District Judge Denny Chin and referred to Magistrate Judge Michael Dolinger. Defendants filed a motion to dismiss the Complaint. The case was then reassigned to the undersigned. Judge Dolinger has issued his Report and Recommendation (“Report”), dated March 17, 2011, which recommends that Defendants’ motion be granted in part and denied in part. Any objections to the Report were due by April 4, 2011, but none was filed.

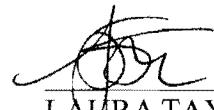
The Court “may accept, reject, or modify, in whole or in part, the findings or

recommendations made by the magistrate judge.” 28 U.S.C.A. § 636(b)(1)(C) (West 2009). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wynn v. Lempke, No. 08 Civ. 3894(RJS), 2009 WL 1227362, at *2 (S.D.N.Y. May 5, 2009). Judge Dolinger’s Report reflects a thorough and diligent analysis of the applicable law. The Court is satisfied that the Report contains no clear error. Accordingly, the Court adopts the Report in its entirety.

Defendants’ motion to dismiss the Complaint is granted insofar as Plaintiff has made a claim against Defendants in their official capacity. The motion is granted with regard to Plaintiff’s claims for false accusation and false testimony against Defendants Berry, Caraballo and Lassiter. The motion to dismiss the claims against Defendants Calero and Bezio is denied. This Order resolves docket entry number 9. The case is not referred to Magistrate Judge Dolinger for general pretrial management. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith.

SO ORDERED.

Dated: New York, New York
April 20, 2011



Laura Taylor Swain
United States District Judge